

### **The 1996 Act States That Subscriber List Information Must Be Made Available**

The Telecommunications Act of 1996, signed into law on February 8, 1996, says that "...a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." [U.S.C. 222 (e)].

Subscriber list information is defined as any information "...identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format." [Sec. 222(f)(3)]

In a May, 1996, Notice of Proposed Rulemaking (NPRM) on Implementation of Local Competition Provisions of The Telecommunications Act of 1996, the FCC notes that Section 222 [which was added as a new section to the Communications Act of 1934] took effect upon enactment and will be further specified by the FCC. The NPRM states: "Although *the requirements of Section 222 were immediately effective* [emphasis added], we tentatively conclude that regulations that interpret and specify in more detail a telecommunications carrier's obligations under subsections 222 (c) - (f) of the 1996 Act would be in the public interest." [FCC 96 - 221, May 16, 1996, para. 2]

In a recent Order implementing the local competition provisions of the Act, the FCC adopts final rules on Part 51 of Title 47 of the U.S. Code of Federal Regulation, dealing with directory assistance and other issues. Under a section on directory assistance and directory listings, the rule states, "(ii) *Access to directory listings. A LEC shall provide directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion upon request. A LEC also must permit competing providers to have access to and read the information in the LEC's directory assistance databases.*" [Emphasis added] [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, Appendix B - Final Rules, Sec. 51.217 (c)(3).]

The order says, "Section 251 (b)(3) requires that each LEC, to the extent that it provides telephone numbers, operator services, directory assistance, and/or directory listings for its customers, must permit competing providers *nondiscriminatory* [sic] access to these services. Any standard that would allow a LEC to permit access that is inferior to the quality of access enjoyed by that LEC itself is not consistent with Congress' goal to establish a pro-competitive policy framework." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 102.]

In the same order, the FCC addresses nondiscriminatory access to directory assistance information at length, and concludes that, "...the term 'nondiscriminatory access' means that a LEC that provides telephone numbers, operator services, directory assistance, and/or directory listings ("providing LEC") must permit competing providers to have access to those services that is at least equal in quality to the access that the LEC provides to itself. We conclude that 'nondiscriminatory access,' as used in section 251 (b)(3), encompasses both: (1) nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC. LECs owe the duty to permit nondiscriminatory access to competing providers of telephone exchange service and to providers of telephone toll service, as the plain language of the statute requires. Such competing providers may include, for example, other LECs, small business entities entering the market as resellers, or CMRS providers." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 101.]

The Order further states, "Finally, we note that in the *First Report and Order* we found that operator services as well as directory assistance are network elements that an incumbent LEC must make available to requesting telecommunications carriers. In the absence of an agreement between the parties, unbundled element rates for operator services and directory assistance are governed by section 252 (d)(1) and our rules thereunder. The obligation of incumbent LECs to provide operator services and directory assistance as unbundled elements is in addition to the duties of all LECs (including incumbent LECs) under section 251 (b)(3) and the rules we adopt herein." [FCC 96-333, Second Report and Order and Memorandum Opinion and Order, Adopted August 8, 1996, para. 115.]

### **State Actions**

Some states, including California, Florida, New York, and Texas, have recognized the importance of subscriber listings to third parties for wholesale provision of directory assistance and directory publishing for new local-exchange and interexchange providers.

In a recent Order, the New York Public Service Commission instituted a process to investigate the sale of local exchange carrier directory database information and directory assistance services. [NYPSC Case 94-C-0095, Order Instituting Process to Investigate the Sale of Local Exchange Carrier Directory Database Information and Directory Assistance Services, July 19, 1996.] Among the subjects to be addressed in the process, which is scheduled to begin in September, 1996, are the following:

- Should alternative directory publishers have access to incumbent and entrant directory databases or database information and at what cost?
- If access is granted, how should equitable and fair provision of database information be accomplished?

- Since databases are continually being updated, what issues should be addressed to ensure availability of the most current listing information?
- What privacy safeguards are necessary regarding listing information?
- Should directory assistance databases be under the administration of incumbents, their regulated subsidiaries or independent third parties?
- What database security issues are involved and how can they be resolved?
- With regard to access to new entrant and incumbent directory assistance listing information, what compensation arrangements are necessary and how should they be structured?
- Who owns subscriber listing information?
- Should cellular and Personal Communications Services (PCS) directory listings be included in incumbent LEC directories and directory assistance databases as well?
- How should access to complete name, location and telephone number information for telephone customers be assured to 911 and emergency services?

### **Excell Agent Services**

Obtaining subscriber list information is of utmost priority for Excell Agent Services, an Arizona company which was organized for the specific business purpose of providing voice directory assistance services on a wholesale basis to companies involved in the telecommunications and multimedia businesses. These companies include new companies competing for the provision of local exchange services and access to long distance; interexchange telecommunications providers; international telecommunications companies; cellular and other wireless service providers; cable companies providing telecommunications services; and electric utilities and municipalities providing telephone services. Excell's objective is to provide to all these companies wholesale directory assistance services that will be equal in all respects to the directory assistance services provided by the incumbent LECs and facilities-based interexchange carriers.

Without subscriber list information, Excell, and other companies engaged in providing directory assistance services on a wholesale basis, cannot provide their customers the same information they would receive from an incumbent LEC, and the information they do provide is more likely to be inaccurate and/or obsolete.